REMARKS

Claims 1-10 are pending in the instant application. Claims 1-10 have been subjected to restriction as follows:

Group I, claims 1-6, drawn to methods for diagnosing the presence of prostate or a gynecologic cancer comprising measuring levels of an ESBII polypeptide comprising the amino acid sequence of SEQ ID NO:2;

Group II, claims 1-6, drawn to methods for diagnosing the presence of prostate or a gynecologic cancer comprising measuring levels of an ESBII polypeptide encoded by a polynucleotide comprising SEQ ID NO:1;

Group III, claims 7-8, drawn to methods of imaging prostate cancer or a gynecologic cancer comprising administering an antibody which binds ESBII; and

Group IV, claims 9-10, drawn to methods of treating prostate cancer or a gynecologic cancer comprising administering an antibody which binds ESBII.

The Examiner suggests that Groups I-IV do not relate as a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding special technical feature. Specifically, the Examiner suggests that the special technical feature of Group I is a polypeptide comprising

SEQ ID NO:2 while the special technical features of the claims of Groups II-IV are drawn to different products, polynucleotides and antibodies.

Applicant respectfully traverses this Restriction Requirement.

At the outset, it is respectfully pointed out that the Examiner's suggestion that "the inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical feature" contradicts both the Search Report and the Written Opinion issued in the PCT application of which this case is the U.S. National Stage.

Further, Applicant respectfully disagrees with the Examiner that a polypeptide, a nucleotide sequence encoding that polypeptide and methods of using antibodies against that polypeptide do not share a single general inventive concept and corresponding technical feature. Clearly, the polypeptide ESBII is a single general inventive concept linking all of the Groups.

In addition, MPEP §803 provides two criteria which must be met for a restriction requirement to be proper. The first is that the inventions be independent or distinct. The second is that there would be a serious burden on the Examiner if the

restriction is not required. A search of the prior art relating to all of the claims has already been performed in the PCT application. Thus, there should be no burden placed upon the Examiner by including all claims in this case, since the full claim set was already searched and examined in the PCT application.

Further, a search of prior art relating to the polypeptide sequence of Group I would also reveal references teaching polynucleotides encoding this polypeptide as set forth in Group II and uses for the polypeptide sequence as set forth in Groups III and IV.

Accordingly, since this Restriction Requirement does not meet both criteria as set forth in MPEP § 803 to be proper, it is respectfully requested that this Restriction Requirement be withdrawn.

However, in an earnest effort to be completely responsive, Applicant elects to prosecute Group I, SEQ ID NO:2, with traverse.

Respectfully submitted,

/Kathleen A. Tyrrell/

Kathleen A. Tyrrell
Registration No. 38,350

Date: **September 13, 2002**

Licata & Tyrrell P.C.
66 E. Main Street
Marlton, New Jersey 08053

(856) 810-1515